Supreme Court, U.S.
FILED

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No.

IN THE
SUPREME COURT OF THE UNITED STATES

BURT SHERMAN WILLIAMS
PETITIONER

v.

MARK WARNER, GOVERNOR
JERRY W. KILGORE , ATTORNEY GENERAL
C. RAY DAVENPORT , COMMISSIONER
LABOR & INDUSTRY
WILLIAM L. DUDLEY, JR. CHAIRMAN WORKERS
COMPENSATION COMMISSION
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT
CA 03-1372

PETITION FOR WRIT OF CERTIORARI

Burt Sherman Williams
24 Langston Boulevard
Hampton, Virginia 23666
(757) 826–5664

QUESTIONS PRESENTED

1. Why does Common Law of England in the work place allow one individual to dominate another individual?
2. What is the at-will right to work policy?
3. Is it the obtaining of money or property by means of a false token, symbol or device; this being the definition of a cheat or cheating at common law?
4. Doesn't the Common Law of England at-will right to work policy grant certain individuals the authority to take, steal and carry away another individuals' earnings?
5. Does the XIII Amendment, the 1964 Civil Rights Act or the Bacon Davis Act have any merits of validations other than on paper under the Common Law of England?
6. If the Common Law of England is the law in the State of Virginia as a result of an accepted practice, hasn't the United States Government been over thrown?
7. Would the over throw of the United States Government constitute treason or a declaration of war against myself and other African Americans by the actions taken by Jerry W. Kilgore?
8. Isn't it a declaration of war, against African Americans if the Chief Law Enforcement Officer is allowing , defending and protecting individuals that have documented that they did take, steal and carry away $3640 a year of my earnings as being legal under the at-will right to work , Common Law of England doctrine?
9. Does this 400 year practice of Common Law of England allow me or any other African American to truly obtain justice in the courts empowered within the State of Virginia?

10. How will the court handle my petition, if one of the respondents is the Attorney General , the Chief Law Enforcement Officer for the State of Virginia?
11. Will I continue to be taxed, while being denied government representation as a result of my race and the Common Law of England?
12. Wouldn't Henry Coke Morgan, Jr., the U. S. District Court Judge be compelled to rule in accordance with the accepted practices in the State of Virginia
13. Wouldn't Henry Coke Morgan, Jr., by being the trial judge be, admitting that he had committed an error?
14. If the granting of Action No. 4: 02cv 149, appeal to the US Court of Appeals For The Fourth Circuit, isn't that an admission of error?
15. What is the granting of my appeal?
16. If the Fourth Circuit affirmed the ruling of the district court wouldn't the court also be affirming my appeal, from the ruling that granted me the appeal?
17. If the respondents holds the offices of Governor, Attorney General, Commissioner of Labor & Industry and the Chairman of Workers Compensation, how does this lone African/American Man, obtain jurisdictional justice?
18. Is this Common Law justice for all or is it the illusion of justice for some?

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STATUTES

Common Law of England

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, Burt Sherman Williams, respectfully pray that a Writ of Certiorari be issued to review the judgment and opinion of the United States Court of Appeals For The Fourth Circuit in making it's ruling, in part with the knowledge of fraud. It was the discretion of the court to suppress the granting of the appeal, from Henry Coke Morgan , Jr., the US District Court Judge.

Henry Coke Morgan, Jr., reversed his decision when my appeal was granted. According to the letters of the law the only time an appeal is granted is when the trial judge acknowledges that there was an error in the trial.

The XIII Amendment violator, Common Law of England and the powers that come to bear, compel Henry Coke Morgan, Jr., to deny me Due Process and dismissed my claim. Yet, he granted an appeal.

According to the rules associated with academics, reading with understanding, by admission that there were errors, wouldn't that decision be reversed and by his hand.

The shot that was heard around the world was an African American giving his life in opposition to the Common Law of England, which is unconstitutional.

Apparently Judges Luttig, King and Hamilton were made aware of the possible impact on the State of Virginia if a single impoverished, African American Man, would have, if he could

prove the state to be in violation on his Equal Protection Rights of the XIV Amendment?

So, in their haste to remove themselves from this case they affirmed my appeal. Wasn't it the appeal that affirmed my petitioning the Fourth Circuit Court of Appeals for judicial resolutions?

There has been so much effort and work that has gone into denying me, what I worked to obtain (earned). What is the problem with being compensated after working to obtain as well as working to maintain life?

The original contract with the builders was to build a nation were all people would have the right to Life, Liberty and the Pursuit of Happiness. Why is this in reality, an unobtainable goal, when we are so near?

Perjury or should I use the word falsehood in current day life needs so much support in as much as it is without a solid foundation. It is the corrupt collection of unlawful fees by an office under the color of law by the office.

"Common law" consist of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature. Bishop v. U.S., D.C. Tex., 334 F. Supp. 415, 418.

I am a Master Builder. I went to school to learn to read blue prints. Most, if not all builders use blue prints. They provide the knowledge of what is to be constructed.

Looking at my situation, this situation from a builders' perspective, Common Law of England is designed to destroy the accomplishments of all of the people.

What was accomplished, when I was terminated? I was a member of the team that had worked to build, the State of Virginia, the place of my birth, my home as well as a tourist attraction to assist in today's economics.

I, as much as all of the people in this State of Virginia, this nation has taken part in the building of these United States. So, why is it allowed that anyone that is white can just take African American individuals' labor and life to do with it as they will?

In as much as African Americans are often said to be savage. What is more savage than the treatment of African Americans in the State of Virginia?

Where is the etiquette in taking, stealing and carrying away? It is difficult to imagine the feelings an individual has when they over power an individual to rob them, only to later face the reality.

Especially when all of the people have taken part in the building of the State of Virginia as well as these United States.

Which is why, I seek an understanding as well as the reasoning as to what? What is so great about having the illusion of greatness? When that illusion of greatness has deceit, deception and destruction for it's corner stone?

The builders of the Great War ships that defend this nation are great. Their work, their lives are to build ships for the purpose of national' security and protection of the United States. The ships that defend this nation are second to none. It appears unintelligent to deny the builder that which he has earned, to demonstrate what?

Maybe, it is the result of working for what I needed or wanted in life ,that doesn't allow me the vision. I see, nothing great about stealing an individuals daily bread. Which is

happening in this case, the attempts to forcibly take the bread of life from me.

Work being man 's provider, of his daily bread. It has been my ability to perform my duties as a welder, that allowed me to become a Master Welder. It was my race that inspired.

What other reason would have initiated the people regardless of race to fighting for the independence of this nation? The people had knowledge of Common Law and wanted to separate themselves from it.

Common law as distinguished from law created by the enactment of legislatures. The common law comprises the body of those principles and rules of action, relating to the government and security of persons and property.

Which derive their authority solely from usage's and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing. Affirming and enforcing such usage's and customs; and in this sense, particularly the ancient unwritten laws of England.

Which is all the statutory and case law background of England and the American colonies before the American revolution. People v. Rehman, 253 C. A 2d 119, 61 CaL Rptr. 65,85.

Which resulted in the Declaration of Independence, from the Common Law of England? A war that is recorded as having the Continental Arm as the victor. So, why would the victor submit to the will of the defeated?

The power of the Common Law of England as well as discretion has allowed the respondents to position themselves above the law. Which allows the ancient unwritten law of England and the accepted practice of oppression. Which has

allowed the respondents, from legally presenting one document to dispute negligence by, Mark Warner, Jerry W. Kilgore, C. Ray Davenport or William L. Dudley, Jr.

Does the XIV Amendment read, that the law, is going to grant me, Burt Sherman Williams the same Equal Protection as it would, give to the white individuals, Warner, Kilgore, Davenport and Dudley?

The truth is, Common Law of England is contempt, which is criminal in it's nature. It has these individuals making their own laws and forming their own government.

Whatever, happen to the burden of proof? It is apparent that my case, this case is more about the continued denial of equality to my race than it is about Equal Justice for all.

Travis Owens Mayhew in 1979 had a $50,000.00 payroll when I left in 1984 the payroll was a $ 1,000,000.00.

I am a production specialist. How else would the payroll increase to the level that it did? I was trained by whites to be productive in the work place. How else would my oppressors maintain their life styles? How could I earn my daily bread? If my oppressor wasn't getting paid as a result of my labor? Fare exchange has never been a robbery.

My agreement was for a fare days earnings for a fare days work. I just happen to have been in the, High School Graduating Class of 1965. Which was the class of young people that had to face the changes that came about as a result of the 1964 Civil Rights Act.

The fact that, I could enter the front door to a business wasn't an illusion at the time it happen, it was a fact of life. Why wouldn't, I expect to receive anything other than equal pay for equal work?

Witnessing the change and attempting to follow the letters of the law. However, being unaware, that the letters of the law were being denied enforcement by the government.

Common Law of England, denies me or any other African American a fare days earnings for a fare days work. If I hadn't provided a fare days work for a fare days earning, I wouldn't have earned the right to petition the highest court in these United States.

So, if slavery is abolished, how is it legal under the State of Virginia Non-Discrimination Equal Opportunity policy, that I am entitled to be paid less as a result of my race?

Mayhew realized that, that policy wasn't the most intelligent. He couldn't conceive or accept the fact, that he was paying whites more to earn his corporation less than the individual that was producing. His business was situated on the ability to increase and maintain his earning power.

However, he was also faced with the Common Law of England and who was the master? The corporation was earning economical stability and he was concern about who was the master. The Master was providing food for the table with his work.

He couldn't acknowledge that we, had established a partnership and in a partnership there aren't any greater than nor are there any less than.

His work, his job was to get the work in and my work, my job was to get the work out.

If isn't an illusion that as a result of my race and common law that I started as the lowest paid welder in the corporations' history.

I went on to become the welder certified in structural, pipe, aluminum and MIG. Those certifications, established the standards for all other welders to follow within the corporation.

In facing reality,' making this a fact, in April of 1983, I became the first African American to earn equal pay. I was earning equal wages with Steve Evans.

I had begun exchanging my labor, earning $4.50 per hour. I was told, that this is what welders earn. Steve Evans was receiving $6.25 per hour. What was the welder wages scale or were those wages determined by race?

Welders must provide proof by test that they are certified welders. The Department of the Navy in the case of Davis Boat Works welders. Requires all of their welders to take a welding certification test. The test results certified me as a welder, equal with all other welders.

OPINIONS

The opinion of the Court of Appeals is reported as Williams v. Warner, No. CA-02-1494 (E. D. Va. Feb .26,2003), and appears in Appendix A to this Petition. The unpublished written opinion of the District Court for the Eastern District of Virginia appears in Appendix B to this Petition.

JURISDICTION

The Court of Appeals' opinion in this mater was filed on May 20, 2003.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Common Law of England.

STATEMENT OF THE CASE

The United States District Court, Eastern District of Virginia, had jurisdiction. Henry Coke Morgan, Jr., was compelled to issue a political decision, according to the discretion of the common law, rather than a judicial decision.

Slavery doesn't just happen, it requires an action. In as much as my ancestors were bought to this country in chains implies an act of war.

The victims of war may find themselves receiving more than just cruelty. They may be subjected to being murdered, lynched, starved, mutilated as well as many other acts of inhumanity.

Henry Coke Morgan, Jr., being aware of all the cruelties suffered by African Americans in the name of justice, was without resolve. Being a member of the forces that have established themselves as the dominate influence. The powers within the State of Virginia, they wouldn't allow justice to be served.

He understood the forces of power that would have attacked him as a result of a just ruling. However, being an individual of integrity he wouldn't or couldn't deny the truth. He admitted he had committed an error and open the door for me to pursue justice.

Judges Luttig, King and Hamilton were faced with the same delusion as Judge Morgan. They had knowledge and were aware that African Americans are denied, equal justice. Common law in the state is repugnant as well as inconsistent with the Constitution of the United States.

It appears that, in the hearts and minds of those individuals in the State of Virginia, that deem themselves the dominate

influence, it is apparent that it would be next to impossible to incorporate that which was learned from reconstruction.

I was taught that education is to mare you think. I do question, the thinking of the individuals Luttig, King and Hamilton. What were these individuals thinking?

I must assume that Common Law allows them to appear to us as so powerful, that integrity never comes into question. How will they defend their said integrity? What did they hope to gain? Why is it imperative, that I remain impoverished? Why is the work being done, heading all of the people in the state towards the destruction of the State of Virginia?

REASON FOR GRANTING THE WRIT

The Writ of Certiorari should be granted for several reasons: Common Law is criminal with criminal intent and it is unconstitutional.

Common Law allows for the United States Constitution and all of it's amendments to be violated at the discretion of the courts and the legislators. All with the authority to correct these problems are members of the same club and fearful. I have witnessed retaliation.

In this manner the governing body assumes, sovereign power. With this understanding, that the respondents are the Lords. They are the all powerful in the State of Virginia.

Since they have sovereign power. We the people become the property of the Lords, to do with as they will.

Which allows them to grant, their overseers the authority to administer whatever criminal act to the Lords property they desire.

Common law, it was in the summer of 1982 the temperatures were running in the 90's. Travis Owens Mayhew had the Thimble Express placed where there would be sun from the early morning until the end of the work day.

The sun was so hot that I had to lay boards in the work area. I needed to use leather protection to prevent welding burns while in that heat. I was over come, by the heat and had to leave work. That heat made me sick and ill.

I was being exploited as well as tortured, what was the reasoning? This was one of the ways for me to experience discretion. It was my understanding that the corporation was in business to make money.

This wasn't the way to make money. Let us take a look at the exploitation. He was making $50 per hour for my welding skills. That comes out to be $ 400 per day. I was making $4.50 per hour that comes out to be $36 per day. I was making my weeks wages in a day. The corporation was getting 4 days labor profit per week. This wasn't a problem for me - All that I required, was welders wages for welders work.

So why would he want to hurt me? I was being exploited as a result of the color of my skin. My wages were low enough. I didn't need to be short the 40 hours. I wasn't stealing, committing any robbery. I was working for what I needed. To meet my obligations for self, as well as for my wife and family.

When my work on the Thimble Express was completed and whites were assigned work to do on that boat. It was moved out of the sun, in fact into a shade. It was at Mayhems discretion. This was without any regards to the cruelty and mental damages, I was suffering at his discretion.

I am the person that was working. While Mayhew, stood at the back door entrance, drinking from a blue cup. To witness, as well as ensure that I was working on the job, to endured the torture.

I am a Master Welder. I was trained, to my knowledge, in one of the best welding school in the country.

I held the must welding certification of any welder in the corporation's history. I am a Master Welder. Which is the result of finding ways to do my job. The beauty of the craft is being able to do the work. I found away to endure as well as complete the job.

My wife and children weren't concerned about my working conditions. They wanted me to provide food for the table among other things.

I didn't witness or experience any special business skills in regards to Mayhew. I didn't see that, real knowledge of the work, of the job come from him. So, how did he gain the authority, to completely control my life to dominate me? How did he benefit by subjecting me to pain and suffering?

The claimant with the knowledge is with the article of the Seven (7) for the claimant is with the damage by the court for the claim with the TITLE -42;U.S.C.S.-1986 for the knowledge of the law in the truth of the Due Process of the Law with the C.U.S.W.F. of the party by the show of the Fraud; C.C.-9(b) of the court.

I am seeking an understanding as to why, Travis Owens Mayhew was so cruel to me? Why he physical tried to see that I was subjected to bodily harm? The reason for the mental abuse? Which resulted in my being totally disable? I was only earning him, money?

The damage suffered mentally made me aware of all the damages I had suffered. I knew, I was entitled to, the difference in the wages white welders were receiving. As a result of the difference in my wages with damages. I knew that, it was a reasonable request. I was only requesting that which I had worked hard enough to obtain, earn.

The U.S. District Court, Robert G. Doumar was the presiding judge in Williams v. Davis Boat Works. He closed his court to the public. So that it wouldn't see or have the knowledge of the court commit fraud, in Civil 89-00037.

Robert G. Doumar, wilfully with the knowledge of his actions committed, fraud. However, I would consider that Robert G. Doumar was forced into his decision. As was the Fourth Circuit 89-3362 as well as the U.S. Supreme in 91-5879. All having the knowledge that my only recourse was to learn, why? Why, I have been denied Due Process. I was, without the knowledge of the use of, Common Law.

I did not just walk up to The Supreme Court of The United States. I had to earn the right with a valid claim, there isn't another way. Again I am forced to face, discretion.

I went on the job and gave my word. That I would provide a honest days work, for and honest days pay. This I did, with honor. I got hurt and workers compensation, at their discretion denied my claim.

I suffered mental damages that make me 100% disable. The torment, the mental damages along with the pain and suffering at the discretion. Prevent me from working on anyone's job.

It is because, I worked so hard. I was treated with so much malice. I had to wonder. I didn't receive this type of treatment

in the Department of Corrections. I was trying to understand. Why, was I being treated in this manner?

Common Law is criminal with criminal intent and is a violation, not just to the constitution but, to all of human life. In as much as Common Law is criminal with criminal intent. People fear what could happen if they stood up in opposition.

It is the result, of my lack of fear. That I, see myself as having been selected to in form Common Law. That all things come to an end.

It is now time for us to live our lives with the law and not the discretion of those that would act fraudulent to deny life, liberty and the pursuit of happiness.

I have had 55 years of pain and suffering. I understand, that we haven't experience the good side of life and it is time for that experience.

Common Law is and will always be criminal with criminal intent, which violates the United States Constitution. It is now the discretion of the Court to validate Common Law or the United States Constitution.

CONCLUSION

It is visible that I am alone. Why am I, alone? What services do I receive for my tax dollars? President Clinton, when he was president was accused of a crime. He wasn't defended by the United States Attorney General.

Governor Warner, questioned Jerry W. Kilgore concerning a redistricting pain. After the questions, he had to obtain personal and private legal counsel, from that time on.

When Jerry W. Kilgore , the Attorney General for the State of Virginia was accused, he used his office to defend him and deny me, justice. He has that discretion. What do I have?

Wasn't it the results, of the knowledge, of the fraudulent acts of Common Law? The crimes committed with criminal intent associated with Common Law, isn't it criminal?

Those of you that sit in judgment of me, has never had to ponder how you will obtain needed medication, associated in cancer treatment. Nor have any of you that sit in judgment, had to wonder if you could come up with the filing fee to continue, struggling for justice.

My writ of certiorari should be issued to reviewed the judgment and the opinion of the Court of Appeals in this matter.

Common Law places me at your discretion. If you so choose my case will be reviewed, if you so choose I can be awarded damages of 100 million dollars, if you so choose. Which I do seek or request for all of my pain and suffering.

It has taken me 18 years to learn the truth. This was research. It was my discretion to seek an understanding as to, what is the truth?

Common Law was instituted to the courts to preserve life. Duels for honor were meeting with disastrous results. To prevent and preserve life under Common Law the courts were established?

I see, it as the causes and affects of Common Law that the United States Constitution of America was written. Why, many of the signers were murdered.

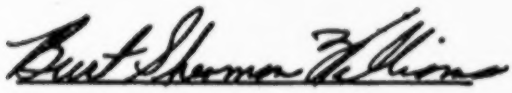
The Common Law, is all the statutory and case law background of England and the American Colonies before the American Revolution.

Common Law is criminal in it's intent and it violates the entire Constitution, in as much as all actions, are at another's discretion.

The petition for Writ of Certiorari should be granted. Common Law is criminal with criminal intent and it violates the United States Constitution.

The enforcers, of the Common Law in Virginia are : Mark Warner, Jerry W. Kilgore, William L. Dudley, Jr. and C. Ray Daveport. They have the knowledge of the fraud that has been committed against me for personal gain under the color of law from their offices.

Humbly submitted,



Burt Sherman Williams

Date: 08-18-2003

CERTIFICATE

I certify that on August 18, 2003, a true copy of the foregoing pleading was mailed, first class, postage prepaid to:

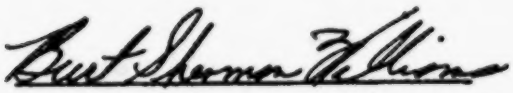
Mark Warner, Governor
Capital Building
Richmond, VA 23219

Jerry W. Kilgore, Attorney General
900 East Main Street
Richmond, VA 23219

C. Ray Davenport, Commissioner Labor & Industry
13 South Thirteenth Street
Richmond, VA 23219

William L. Dudley, Jr., Chairman Worker's Compensation Commission
1000 DMV Drive
Richmond, VA 23220

Clerk of the Court
Supreme Court Of The United States
1 First Street, N.E. Washington, DC 20543



Burt Sherman Williams

APPENDIX

UNPUBLISHED
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 03-1372

Burt Sherman Williams,

Plaintiff – Appellant

Versus

Mark R. Warner, Governor, Commonwealth of Virginia;
Workers' Compensation Commission;
Jerry W. Kilgore, Attorney General;
C. Ray Davenport, Commissioner Labor and Industry

Defendants – Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Henry Coke Morgan, Jr., District Judge. (CA-02-149-4)

Submitted: May 15, 2003 Decided: May 20, 2003

Before LUTTIG and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Burt Sherman Williams, Appellant Pro Se. Elaine Scott Moore, Office of the Attorney General of Virginia, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Burt Sherman Williams appeals the district court' s order denying relief on his 42 U.S.C. § 1983 (2000) complaint. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. See Williams v. Warner, No. CA—02—149—4 (E.D. Va. Feb. 26, 2003). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NEWPORT NEWS DIVISION

Action No: 4:02cv 149

BURT SHERMAN WILLIAMS,

PLAINTIFF

V.

MARK WARNER, ET. AL.,

DEFENDANTS

[Filed: February 26, 2003]
[Clerk, U.S. District Court, Norfolk, VA]

ORDER

This matter comes before the Court on the Plaintiff's motion for change of venue and Defendants' motion to dismiss. For the reasons set forth below, Plaintiff's motion for change of venue is **Denied** and Defendants' motion to dismiss is **Granted**.

FACTUAL BACKGROUND[1]

1. Plaintiff was employed as a welder by Davis Boat Works, Inc. from 1979 to 1984.

2. Plaintiff's supervisor at Davis Boat Works, Inc. was Travis Owens Mayhew.

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[1] The facts of this ruling are stated in the light most favorable to the Plaintiff, and are not factual findings for any other purpose.

3. While working for Mr. Mayhew, Plaintiff, an African American, was allegedly paid less than his Caucasian co-workers and was allegedly subjected to cruel and inhumane treatment.

4. Plaintiff was terminated from his employment with Davis Boat Works, Inc. on November 20, 1984.

5. Thereafter, Plaintiff "couldn't get a job," and it became apparent to him that he "wasn't capable of maintaining employment [because he] had become disable[d]."

6. Due to his disability, Plaintiff was awarded social security benefits on October 29, 1992. According to Plaintiff, the administrative law judge that heard his claim affirmed that the disability arose during his employment with Davis Boat Works, Inc.

7. On March 1, 1994, Plaintiff filed a claim for benefits with the Virginia Workers' Compensation Commission, alleging a 1981 injury or occupational disease causally connected to his employment in 1982. The deputy commissioner denied his claim, and the full commission subsequently affirmed.

8. At some point, Plaintiff contacted the Commonwealth's Department of Labor and Industry and on May 23, 2002, Plaintiff received a letter informing him that the Commonwealth follows employment-at-will doctrine inherited from English common law.

9. Plaintiff filed the instant cause of action on December 3, 2002, alleging "It is negligence with cruel intent by the Worker's [sic] Compensation Commission to deny me workers [sic] compensation."

DISCUSSION

A. Change of Venue

In his motion for change of venue, Plaintiff seeks to transfer this case to Congress, because "it is only Congress that has the authority to determine if [he is] in fact, entitled to workers' compensation." However, Congress has no authority to award Plaintiff workers' compensation benefits. Furthermore, Congress is vested with the legislative power of the United States; it has no authority to resolve judicial disputes. U. S. Const. art. I, § 1. The judicial power of the United States is vested in federal courts. U.S. Const. art. III, § 1. Accordingly, Congress has no authority to resolve this matter and Plaintiff's motion for change of venue is **Denied**.

B. Motion to Dismiss

The function of a motion to dismiss is to test the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses. *Republican Party of North Carolina v. Martin,* 980 F.2d 943, 952 (4th Cir. 1992) (internal citation and quotation marks omitted). In ruling on a Rule 12(b)(6) motion, a Court should keep in mind that as a matter of general course it is a "disfavored motion." *Fayetteville Investors v. Commercial Builders, Inc.,* 936 F.2d 1462 (4th Cir. 1991). A motion to dismiss under Rule 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957); *Martin Marietta Corp. v. International Telecommunications Satellite Org.,* 991 F.2d 94, 97 (4th Cir. 1993). During the process of considering a motion to dismiss for failure to state a claim, a court must construe the

complaint in the light most favorable to the non-moving party and take that party's allegations as true. *Jenkins v. McKeithen,* 395 U.S. 411, 421-22 (1969); *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). The Court primarily relies on the allegations in the complaint during a 12(b)(6) ruling, but may also consider documents attached to the complaint and incorporated by reference. *Simons v. Montgomery County Police Officers,* 762 F.2d 30, 31-32 (4th Cir. 1985). *Simons* documents maybe copies of case law, undisputed contracts or public documents, such as those used to establish ownership or proper zoning. *See* Id.

The nature of Plaintiff's action is difficult to determine. In his motion for change of venue, Plaintiff refers to a "conspiracy to defraud [him) of [his) entitlements [sic) to workers' compensation." Liberally construed, it appears Plaintiff is attempting to state a claim under 42 U.S.C. § 1983[2] for an alleged conspiracy to deprive him of state workers' compensation benefits.

As to the alleged denial of workers' compensation, however, Plaintiff's claim fails to state a claim upon which relief may be granted because the statute of limitations has expired. Plaintiff complains of events that occurred

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[2] Section 1983 states in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983.

approximately nine years ago. Although no specific federal statute of limitations applies to section 1983 actions, the Supreme Court decided that, for statute of limitations purposes, all section 1983 actions would be characterized as tort actions for the recovery of damages for personal injuries and held that the state statute of limitations for personal injury applies to all section 1983 claims. Wilson v. Garcia, 471 U.S. 261, 280 (1985). In states with multiple statutes of limitations for personal injury, the general or residual statute of limitations for personal injury applies in all section 1983 cases. Owens v. Okure, 488 U.S. 235, 249-50 (1989). The Commonwealth of Virginia has a two-year statute of limitations period for personal injury actions, Va. Code Ann. § 8.01-243(A), which applies in section 1983 actions. Lewis v. Richmond City Police Dep't., 947 F.2d 733, 735 (4th Cir. 1991). The events that form the basis of Plaintiff's complaint occurred in 1994 when Plaintiff filed a claim for benefits with the Virginia Workers' Compensation Commission, which was denied. Plaintiff filed this action on December 3, 2002. Accordingly, Plaintiff's complaint is barred by the applicable statute of limitations.[3]

Petitioner is **Advised** that he may appeal from this final order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice of

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[3] The Court notes that the only event that occurred within the two-year statute of limitations period was the letter received from the Commonwealth's Department of Labor and Industry advising that the Commonwealth follows the employment-at-will doctrine inherited from English common law. However, this letter fails to state a legally cognizable claim for relief.

appeal must be received by the Clerk within thirty (30) days from the date of this Order.

The Clerk is **Requested** to send a copy of this order to Petitioner and all counsel of record.

It is so **Ordered.**

/s/ Henry Coke Morgan, Jr.
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
February 26, 2003

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY
C. RAY DAVENPORT, COMMISSIONER
MAY 13, 2002

POWERS-TAYLOR BUILDING
13 SOUTH THIRTEENTH STREET
RICHMOND, VA 23219

PHONE (804) 371-2327
FAX (804) 371-6524
TDD (804) 786-2376

Mr. Burt Sherman Williams
24 Langston Boulevard
Hampton, Virginia 23666-4643

Dear Mr. Williams:

Governor Warner asked me to thank you for your letter and to respond to you on his behalf.

I read with great interest your letter which describes the changes you have seen in the world in the past thirty-seven years that you have been working. You should be very proud that you were in the vanguard of the operation of landmark legislation, the Civil Rights Act of 1964. It is important for all of us today to be mindful of the sacrifices that were made so that we could enjoy so many opportunities. The legal principals included in that legislation are extremely important to Governor

Warner. He has demonstrated his firm and unwavering support for equal opportunity for all. You should also be proud that you followed in the footsteps of your father and grandfather when you took up the trade of welding.

The Commonwealth of Virginia is an employment at will state. Employment at will is a legal principal that comes down to us from English common law and means that employers are free to set employment policies and practices that best serve their business needs. The exception to this well established principal is that an employer's policies and practices may not be discriminatory either in nature or effect and can not violate public policy. Employment at will is the accepted doctrine of the Commonwealth of Virginia because it reflects the legislature's desire to balance the rights of employees with the need to create a robust economy with opportunity for all.

If you believe you have been discriminated against you should contact the federal Equal Employment Opportunity Commission at 800 E. Main Street, Suite 600, Richmond, Virginia 23227. (800) 669-4000. You can also contact the State Council on Human Rights at Washington Building, 1100 Bank Street, Richmond, Virginia 23219. (804) 225-2292.

Often the question of whether an employer has discriminated or violated a public policy is fact specific and best answered by an attorney. The Virginia State Bar maintains a list of attorneys who are willing to consult with clients for a minimal fee. You can obtain the name of one of these attorneys by contacting the Virginia State Bar, Lawyers' Referral at (800) 552-7977. Be sure to tell them you need to speak with an attorney who specializes in labor and employment law.

I hope that you find this information helpful. If I can provide any additional information or assistance, please do not hesitate to contact me again.

Sincerely yours,

/s/ Ellen Marie Hess,
Senior Staff Attorney

cc: C. Ray Davenport,
Commissioner

The Honorable Michael J. Schewel
Secretary of Commerce and Trade